

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**ANTONIO D. WATSON, et al.,  
Plaintiffs,**

**v.**

**ABINGTON TOWNSHIP, et al.,  
Defendants.**

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**CIVIL ACTION**

**NO. 01-5501**

**MEMORANDUM AND ORDER**

**Tucker, J.**

**August 5, 2005**

Presently before this Court is Defendants' Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56(c) (Docs. 39 & 40), Plaintiffs' Memoranda in Opposition (Docs. 43 & 45), and Defendants' Reply Memorandum (Doc. 46). The Court heard oral argument in this matter on February 22, 2005. For the reasons set forth below, this Court will grant in part and deny in part Defendants' Motion for Summary Judgment.

**I. FACTUAL BACKGROUND**

From the evidence of record, taken in a light most favorable to the Plaintiffs, the pertinent facts are as follows. Plaintiff, Antonio Watson ("Watson"), an African-American male, owned Plaintiff Tony's Tix, Inc., ("Tony's Tix") a concert ticket-selling agency located in Abington, Pennsylvania. Watson operated Tony's Tix in a space that he leased from Plaintiff Gerald W. Kelly ("Kelly"). Kelly, a retired Abington police officer, also owned Plaintiff Just Jerry's Inc., d/b/a Scoreboard Restaurant & Tavern (the "Scoreboard"). Tony's Tix and the Scoreboard were adjacent to each other. Plaintiff, Robert Kennedy ("Kennedy"), was a Tony's Tix employee who worked for

Watson since October 1998. Plaintiffs claim that the Defendants are responsible for harassment and civil rights violations based on a series of events involving the Abington Township Police.

In 1998, Watson established Tony's Tix, and entered into a lease with Kelly. Watson alleges that in February of 2000, Defendants Richard Kondon ("Kondon") and John Parks ("Parks"), both police officers, submitted an affidavit of probable cause for a search warrant for Tony's Tix. The affidavit of probable cause contained allegations that Watson issued bad checks to an employee and failed to deliver tickets or refunds to Tony's Tix customers. Watson contends that the statements in the affidavit were false and that Defendants Kondon and Parks were aware that the statements were false. On February 11, 2000, the Abington police executed the search warrant. Upon review of the fruits of the search, the police obtained an arrest warrant for Watson. The police arrested Watson for issuing bad checks and possession of a stolen check. On September 5, 2001, the Montgomery County District Attorney's office voluntarily dismissed the charges against Watson. Subsequently, Tony's Tix went out of business.

Plaintiff Kelly also had interactions with the Abington police. According to Kelly, the police began harassing him as soon as he leased his property to Watson. Abington police officers raided Kelly's property and questioned Kelly about Watson's business and background. The alleged harassment continued when, in 1998, Watson began negotiations with Kelly for the purchase of the Scoreboard. Watson contends that the Defendants, having heard of the potential sale, conspired to drive both Watson and Kelly out of business because Watson was African-American. First, the police used DUI checkpoints in the area of their businesses. From 1996 to 1999, the police set up thirty-seven check points in Abington Township. Five of those checkpoints were in the area of the Scoreboard. The police set the first three check points in the area of a library parking lot located one

block from the Scoreboard. The checkpoint closest to the Scoreboard was located across the street on August 28, 1998. Plaintiffs Watson and Kelly allege that these checkpoints had a chilling effect on their businesses.

Second, Watson and Kelly contend that the police conducted underage drinking sweeps in Abington Township in an attempt to harm their businesses. Abington Township funded the sweeps, in part, with money from a grant provided by the Commonwealth of Pennsylvania. A sweep consists of sending several uniformed police officers into a restaurant or tavern to investigate underage drinking in targeted establishments. At times, a sweep would involve the positioning of marked police vehicles outside of the targeted establishment. The police conducted the sweeps twice a year, pursuant to the terms of the Commonwealth's grant. The dates of the sweeps were May 20, 1999, December 17, 1999, August 3, 2000 and November 16, 2000. The Scoreboard was one of the targets. On May 20, 1999, the police found nine underage drinkers at the Scoreboard; on August 3, 2000, the police found five underage drinkers. During the sweeps, the police targeted twelve different bars in Abington. In July 2001, Plaintiff Kelly closed the Scoreboard. Plaintiff Kelly alleges that the Defendants used the sweeps to harass him because of his social and professional relationship with Watson. Furthermore, Kelly alleges that the Defendants' conduct was a substantial factor in causing the Scoreboard to go out of business.

Additionally, Plaintiff Kennedy contends that Defendant Anthony Ammaturo ("Ammaturo") arrested him pursuant to an arrest warrant that lacked probable cause. The police alleged that Kennedy made threats against Kondon. Plaintiff Watson told the police about Kennedy's alleged threat. On July 26, 1999, Watson came to the Abington Township Police Department and reported that Kennedy threatened to kill Detective Kondon. According to Watson, Kennedy told him that if

Detective Kondon came to the Scoreboard during the evening that “he won’t come back out.” Kennedy also reportedly made reference to an FBI agent killed on Delaware Avenue and indicated “if that can happen to an FBI agent, that can happen to cops too.” Defendants argue that this report was enough to establish probable cause for Kennedy’s arrest. Plaintiffs assert that Ammaturo knew that Kennedy did not make such threats, but obtained the warrant anyway. While the police had Kennedy in custody, the Defendants allegedly told Kennedy that they would drop his charges if he would cooperate with them regarding their investigation into Watson’s alleged illegal activities. However, Kennedy refused to cooperate. Plaintiffs filed this action due to the events described above.

## **II. LEGAL STANDARD**

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under the governing law. *Id.*

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant’s initial *Celotex* burden can be met simply by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” *Id.* at 325. After the moving party

has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against the opponent, even if the quantity of the movant’s evidence far outweighs that of its opponent. *Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1363 (3d Cir. 1992). Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. *Anderson*, 477 U.S. at 255. Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from facts must await trial. *Id.*

### **III. DISCUSSION**

#### **A. Federal Question Claims<sup>1</sup>**

##### **1. Plaintiff Watson’s Fourth Amendment Claims**

###### **a. Unreasonable Search and Seizure**

To survive summary judgment, a § 1983 plaintiff seeking to challenge a probable cause affidavit must meet the test outlined by the Supreme Court in *Franks v. Delaware*, 483 U.S. 154, 155-56 (1978). The plaintiff must show (1) that the affiant knowingly and deliberately, or with a

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<sup>1</sup> Unless otherwise noted, the Plaintiffs bring their federal claims pursuant to § 1983 of the Civil Rights Act of 1871. Section 1983 provides a cause of action against any person who, acting under color of state law, deprives another of his or her federal rights. *Wright v. City of Philadelphia*, 409 F.3d 595, 599 (3d Cir. 2005).

reckless disregard for the truth, made false statements or omissions in applying for a warrant and (2) that such statements or omissions were material to the finding of probable cause. *Sherwood v. Mulvihill*, 113 F. 3d 396, 399 (3d Cir. 1997). This does not mean that every fact recited in the warrant affidavit must be correct. *Franks*, 483 U.S. at 164-65. The affiant's statements must only be "truthful" in the sense that the information put forth is believed or appropriately accepted by the affiant as true. *Id.* At minimum, a plaintiff must be able to prove that the defendants made the statements in the affidavits "with [a] high degree of awareness of their probable falsity." *Lippay v. Christos*, 996 F.2d 1490, 1501 (3d Cir. 1993) (internal citation omitted). Allegations of negligence or innocent mistake are insufficient. *Franks*, 483 U.S. at 171. Watson's unreasonable search claim falls short of meeting this legal standard.

Plaintiff Watson claims that the Defendants deprived him of his Fourth Amendment right of protection from unreasonable search and seizure by using a probable cause affidavit containing false statements to obtain a search warrant for Tony's Tix. Compl. ¶¶ 103-107; Watson's Mem. at 5-10. To support his claim, Watson contends that the information in the affidavit was evidence of "ordinary business disputes" and that "all but one of the complaints had been resolved." Watson's Mem. at 8. Watson further argues that "not a single shred of evidence was found that would have suggested any illegal gambling." *Id.* at 5. Even accepting Watson's characterization of the circumstances surrounding the affidavit as true, the Court could still not allow this claim to survive. The standard for a *Franks* challenge is based on the affiant's belief in the facts, not their ultimate accuracy. *See Franks*, 483 U.S. at 164-65. Plaintiffs have submitted no evidence to indicate how any of the Defendants could have known that the information in the affidavit involved a mere business dispute.

Watson also submits that the fact that Defendant Kondon was a Tony's Tix customer is evidence of a bad faith motive for obtaining the search warrant because Kondon would not patronize a business engaging in illegal operations. *Id.* at 10. This fact alone does not show that either officer was aware of any false information in the affidavit. At the summary judgment stage of this litigation, Watson must do more than offer a conclusory statement. Watson points to *no evidence* that establishes the Defendants' awareness of the falsity of the affidavit. Defendants Kondon and Parks received numerous complaints about Tony's Tix, which included writing bad checks, failure to deliver paid for services and making unauthorized charges against customers' credit cards. Defs.' Mem. at 18. That information is sufficient to establish probable cause. Moreover, the "totality of the circumstances" supports a finding of probable cause. *Illinois v. Gates*, 462 U.S. 213 (1983). Therefore, Defendants' Motion for Summary Judgment on Watson's unreasonable search and seizure claim is granted.

#### **b. Malicious Prosecution**

Defendants also move for summary judgment on Watson's malicious prosecution claim. Defs.' Mem. at 28-31. To prove § 1983 malicious prosecution, a plaintiff must show that (1) the defendants initiated a criminal proceeding, (2) the criminal proceeding ended in plaintiff's favor, (3) the defendants initiated the proceeding without probable cause, (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice, and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. *Estate of Smith v. Marasco*, 318 F.3d 497, 521 (3d Cir. 2003). However, Watson's evidence is not sufficient to establish a lack of probable cause. As discussed above, Defendants Kondon and Parks received numerous complaints about the activity in Tony's Tix, which supported a finding of probable cause.

Defs.’ Mem. at 18. Moreover, there was no evidence that Defendants acted maliciously or for a purpose other than trying to bring Plaintiff Watson to justice. Thus, Defendants’ Motion for Summary Judgment on Watson’s malicious prosecution claim is granted.

## **2. Plaintiff Kennedy’s Fourth Amendment Claims**

### **a. False Arrest Claim**

Kennedy alleges that his arrest lacked probable cause because Ammaturo “knew that [Kennedy] did not make [a] threat or was reckless in determining whether...Kennedy made [any] threats.” Compl. ¶ 81. The elements for § 1983 false arrest claim are identical to those in an unreasonable seizure claim. A plaintiff may survive summary judgment for false arrest if that plaintiff can show (1) that the police officer knowingly and deliberately or with a reckless disregard for the truth, made false statements or omissions that created a falsehood in applying for a warrant and (2) that those false statements or omissions were material, or necessary, to the finding of probable cause. *See Wilson v. Russo*, 212 F.3d 781, 786-87 (3d Cir. 2000). Neither party argues that Watson’s statements regarding Kennedy’s alleged threats were immaterial. *See Kennedy Mem.* at 12-15; Defs.’ Mem. at 18-20.

This Court must decide if a disputed material issue of fact exists as to whether Ammaturo should have accepted Watson’s statements as true. To survive summary judgment on this point, Kennedy must show that a reasonable jury could conclude that the defendants made statements or omissions that they knew were false, or would have known were false but for their reckless disregard for the truth. *Wilson*, 212 F.3d at 787 (quoting *U.S. v. Leon*, 468 U.S. 897, 923 (1984)). An assertion is made with reckless disregard if the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported. *Id.* at



788 (quotations omitted). Here, Kennedy has produced evidence of reckless disregard. Kennedy argues that the only evidence indicating that he threatened to kill Detective Kondon came from Watson, who the police did not find credible. Kennedy Mem. at 13. The Defendants' lack of faith in Watson's credibility, is bolstered by the fact that Detective Ammaturo refused to re-file terroristic threat charges against Kennedy once those charges were dismissed. *Id.* at 13-14. Given these facts, a jury could find that Ammaturo had reasons to doubt Watson's account. Consequently, Defendants' Motion for Summary Judgment as to Kennedy's false arrest claim is denied.

#### **b. Malicious Prosecution**

Plaintiff Kennedy also brings a § 1983 claim against all Defendants for malicious prosecution. Compl. ¶¶ 117-120; Kennedy Mem. at 15-16. To prove § 1983 malicious prosecution, a plaintiff must show that (1) the defendants initiated a criminal proceeding, (2) the criminal proceeding ended in plaintiff's favor, (3) the defendant initiated the proceeding without probable cause, (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice, and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. *Marasco*, 318 F.3d at 521. Kennedy argues that he has met these elements because the Abington police arrested him without probable cause and later withdrew the prosecution for the "very suspicious reason" of not being able to locate Watson. Kennedy Mem. at 16. The Court has already ruled that a material issue of fact exists regarding probable cause. Furthermore, a material issue of fact exists with respect to Ammaturo's reasons for arresting Kennedy. According to Kennedy, Detective Ammaturo did not actually believe that he made the threat. *Id.* Ammaturo allegedly wanted Kennedy's cooperation in gathering evidence against Watson and was using the prosecution as leverage. *Id.* Based on the record, a jury could reasonably

conclude that the Defendants maliciously prosecuted Kennedy. Defendants' Motion for Summary Judgment on Plaintiff Kennedy's malicious prosecution claim is denied.

### **3. Plaintiffs' *Monell* Claims<sup>2</sup>**

A municipality may be held vicariously liable for the unconstitutional actions of its agents when the agent's conduct was the result of a "municipal policy" or "well-established custom." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). A municipal policy is a "statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell*, 436 U.S. at 690. A custom is a "persistent and widespread" practice of government action that is "so permanent and well settled as to constitute a custom or usage with the force of law." *Id.* at 691. However, a municipality may not be held liable under § 1983 solely on the basis of the existence of an employee-employer relationship with a tortfeasor. *Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 403 (1997). Municipalities can only be held liable if action pursuant to *official municipal policy* caused a constitutional tort. *Monell*, 436 U.S. at 691 (emphasis added). Further, a municipality can only be liable for a constitutional deprivation if there is a direct causal link between a policy or custom and the alleged constitutional deprivation. *Brown v. Muhlenberg Twp.*, 269 F.3d 205, 214-215 (3d Cir. 2001) (quoting *City of Canton v. Harris*, 489 U.S. 378, 385 (1989)).

Here, Plaintiffs claim that the Abington Township Police Department has a custom or policy of violating the constitutional rights of African-Americans. Compl. 103-107; Kennedy Mem. at 17-19; Watson Mem. at 11, 18, 20-21. Plaintiffs offer evidence of racial profiling by Abington Police in the 1970's, as well as testimony of Abington police officers' use of racial slurs. *Id.*

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<sup>2</sup> Plaintiffs Watson, Tony's Tix, Kelly, the Scoreboard and Kennedy bring this claim. Compl. ¶¶ 95-108

Plaintiffs' *Monell* claim cannot survive for several reasons. Plaintiffs have offered no evidence to prove that the alleged actions of the police reflect a discriminatory custom or policy. The testimony on which Plaintiffs rely merely establishes that the police officers engaged in alleged profiling of African-Americans in the past. Plaintiffs have not offered any evidence that the police department or the Township officially adopted profiling as a law enforcement technique or that profiling was a well-settled practice. Moreover, Plaintiffs have not connected the alleged *past* discrimination with the police actions at issue in *this case*. Even if the profiling of African-American motorists was actionable in the past, the Plaintiffs have not made a showing of how it relates to them in this case. Because the Plaintiff cannot establish that the Defendants had a policy of discrimination or that such a policy deprived any of them of constitutional rights, Defendants' Motion for Summary Judgment on Plaintiffs' *Monell* claims is granted.

#### **4. Section 1985 Conspiracy Claim<sup>3</sup>**

Plaintiffs also allege that the Defendants' actions constitute a conspiracy to deprive them of their constitutional rights. Section 1985 makes it unlawful for two or more persons to conspire for the purposes of depriving a citizen of equal protection under the law. 42 U.S.C. § 1985. However, in the Third Circuit, the "intra-corporate conspiracy doctrine" acts as a bar to § 1985 claims. *See Robinson v. Centerbury Village, Inc.*, 848 F. 2d 424, 431 (3d Cir. 1988) (holding that section 1985(3) conspiracy between a corporation and one of its officers may be maintained only if the officer is acting in a personal, non-official capacity). According to *Robinson*, members of a corporation are treated as one person for § 1985 purposes and therefore cannot enter into a

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<sup>3</sup> Plaintiffs Watson, Tony's Tix, Kelly, the Scoreboard and Kennedy bring this claim. Compl. ¶¶ 95-108

conspiracy. *Id.* An exception to the “intra-corporate conspiracy doctrine” may exist if the individuals (here police officers) are acting in a personal capacity and outside the scope of their authority. *Id.* In the instant case, the actions at issue were performed as part of law enforcement activity. Plaintiffs offer no evidence to suggest that individual Defendants operated outside the scope of their authority. There is simply no proof to support a conspiracy. Defendants’ Motion for Summary Judgment is granted as to Plaintiffs’ § 1985 claim.

## **5. Plaintiffs’ § 1983 Claims for Punitive Damages**

Plaintiffs Watson, Tony’s Tix, Kelly, the Scoreboard and Kennedy also bring a claim for punitive damages. In a § 1983 claim, a jury may assess punitive damages when the defendant’s conduct is shown to be motivated by an evil motive or intent, or when it involves reckless or callous indifference to constitutionally protected rights. *Brennan v. Norton*, 350 F.3d 399, 428-29 (3d Cir. 2003) (quoting *Smith v. Wade*, 461 U.S. 30, 56 (1983)). In order for a § 1983 plaintiff to qualify for punitive damages, the defendant’s conduct must be, at a minimum, reckless or callous. *Id.*

This Court has already granted summary judgment on Watson’s Fourth Amendment claims, the *Monell* claim, and the conspiracy claim; Plaintiffs cannot recover punitive damages for those claims. Regarding, Kennedy’s false arrest and malicious prosecution claims, the Court finds that there is sufficient evidence to support a claim of punitive damages. If a jury were to find that Defendant Ammoturo recklessly made false statements in his probable cause affidavit, such a finding would establish false arrest and potentially entitle Plaintiff Kennedy to punitive damages. Therefore, the Court will allow Plaintiff Kennedy’s claim for punitive damages to stand.

## **B. State Law Claims**

### **1. Commercial Disparagement Claim**

Defendants move for summary judgment on Plaintiffs' commercial disparagement claim. Plaintiffs allege that the statements in the Watson probable cause affidavit as well as statements that the individual Defendants made to other Abington Township police officers damaged their business. Compl. ¶¶ 27, 69, 110-116. To state a claim for commercial disparagement, the Plaintiffs must prove that the Defendants (1) published a false and disparaging statement regarding their business, (2) with the intent to cause pecuniary loss or knowledge that it could cause loss, (3) actual loss by Plaintiffs, and (4) that the Defendants knew the statement was false or acted with reckless disregard for its truth. *Pro Golf Mfg., Inc. v. Tribune Review Newspaper Co.*, 809 A.2d 243, 246 (Pa. 2002). Plaintiffs cannot meet the elements for commercial disparagement because they have shown no evidence of intent to cause pecuniary loss on the part of the Defendants. Even if the Court accepts the alleged statements as true, Plaintiffs' claim cannot survive because they do not offer any proof as to why Defendants made the statements. Moreover, Plaintiffs offer no proof of actual loss caused by the alleged publication of the affidavit for the search warrant or the statements to other officers. Defendants' Motion for Summary Judgment as to Plaintiffs' commercial disparagement claim is granted.

### **2. Intentional Infliction of Emotional Distress Claim**

In Pennsylvania, Plaintiffs may state a claim for intentional infliction of emotional distress if they establish that the Defendants (1) engaged in extreme and outrageous conduct, (2) the conduct was intentional, (3) the conduct caused emotional distress, and (4) the distress must be severe. *Silver v. Mendel*, 894 F.2d 598, 606 (3d Cir. 1990) (citations omitted) (finding that the tort of intentional

infliction of emotional distress is recognized in the Commonwealth of Pennsylvania). Here, Plaintiffs cannot make a *prima facie* showing because none of the Defendants' conduct was extreme or outrageous. To be considered extreme or outrageous, the conduct must be "very offensive to the moral values of society." *Id.* It is not enough that the defendant acted with "an intent...to inflict emotional distress," or even with "a degree of aggravation which would entitle the plaintiff to punitive damages for another tort." Rest. 2d of Torts, § 46, comment d. Defendants' conduct must "be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* Plaintiffs' proof of outrageous behavior falls well short of the standard for outrageous conduct. The only proof of outrageous conduct Plaintiffs provide are the actions at issue in the other torts. *See Kennedy Mem.* at 21. Without more, the claim cannot survive. Consequently, Plaintiffs' claim for intention infliction of emotional distress is dismissed.

#### **IV. CONCLUSION**

For the reasons stated above, this Court will grant Defendants' Motion for Summary Judgment on Plaintiff Watson's Fourth Amendment and malicious prosecution claims. As to the claims brought by Plaintiffs Watson, Tony's Tix, Kelly, the Scoreboard and Kennedy, the Court will dismiss the *Monell* claim, conspiracy claim, commercial disparagement claim, intentional infliction of emotional distress claim and all requests for punitive damages based on those claims. This Court will deny summary judgment on Plaintiff Kennedy's false arrest claim, malicious prosecution claim and punitive damages relating to those claims. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT  
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<b>ANTONIO D. WATSON, et al.,</b>	:	
<b>Plaintiffs,</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 01-5501</b>
	:	
<b>ABINGTON TOWNSHIP, et al.,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

**AND NOW**, on this 5<sup>th</sup> day of August, 2005, upon consideration of Defendants' Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 (Docs. 39 & 40), Plaintiffs' Memoranda in Opposition (Docs. 43 & 45), and Defendants' Reply Memorandum (Doc. 46), **IT IS HEREBY ORDERED** that Defendants' Motion is **GRANTED IN PART and DENIED IN PART**.

**IT IS FURTHER ORDERED** that:

1. Defendants' motion for summary judgment as to Plaintiff Watson's § 1983 claims for unreasonable search and seizure and malicious prosecution is **GRANTED**.
2. Defendants' motion for summary judgment as to Plaintiffs Watson, Tony's Tix, Kelly, the Scoreboard and Kennedy's *Monell* claim, conspiracy claim, commercial disparagement claim, intentional infliction of emotional distress claim and all requests for punitive damages based on those claims is **GRANTED**.
3. Defendants' motion for summary judgment as to Plaintiff Kennedy's § 1983 claims for false arrest, malicious prosecution and punitive damages relating to those claims is **DENIED**.

**BY THE COURT:**

/S/ Petrese B. Tucker

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Hon. Petrese B. Tucker, U.S.D.J.